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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,122	09/21/2001	Mark J. Musante	P5984	5756

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EXAMINER	
CORRIELUS, JEAN M	
ART UNIT	**PAPER NUMBER**
2162	

DATE MAILED: 08/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/960,122	MUSANTE ET AL.	
	Examiner	Art Unit	
	Jean M. Corrielus	2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 March 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. This office action is in response to the amendment filed on March 9, 2005, in which claims 1-20 are presented for further examination.

Response to Arguments

2. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

3. The non statutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of the U.S. co-pending application serial number 09/965,218. This is a provisional double patenting rejection

since the conflicting claims have not in fact been patented. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-20 of the instant application substantially recite the limitations of claims 1-26 of the cited co-pending application. Therefore, it would have been obvious to one of ordinary skill in the art of data processing at the time the invention was made to modify the cited steps as indicated claim 1 of the instant application since the omission and addition of the cited limitations would have not changed the process according to which the method for managing data imaging services from management terminal in a distributed computer system. Therefore, the ordinary skilled artisan would have been also motivated to modify claim 1 of the cited US instant application by substituting the use of controlling the federated bean to designate master volumes, shadow volumes and bitmap volumes and bitmap volumes and to transfer data between specified master and shadow volume with the use of controlling the federated bean to display and configuring the data volume disclosed by US co-pending application. The cited adding elements would not interfere with the functionality of the steps previously claimed and would perform the same function. In re Karlson, 136 USPQ 184 (CCPA 1963).

5. Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 of the U.S. co-pending application serial number 10/092,070. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-20 of the instant application substantially recites the limitations of claims 1-29 of the cited co-pending application. Therefore, it would have been obvious to one of ordinary skill in the art of data processing at the time the invention was made to modify the cited steps as indicated claims 1-20 of the instant application since the omission and addition of the cited limitations would have not changed the process according to which the method for managing data imaging services from management terminal in a distributed computer system. Therefore, the ordinary skilled artisan would have been also motivated to modify claim 1-20 of the cited US instant application by substituting the use of running, in the host computer system, a federated bean that generates platform independent method calls to the management façade to control the interface layer via the plurality of API method with the use of running, in management server, management façade software including a CIM client that can contact the CIM provider to control the CIM provider disclosed by US co-pending application The cited adding and omitting elements would not interfere with the functionality of the steps previously claimed and would perform the same function. In re Karlson, 136 USPQ 184 (CCPA 1963).

6. Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of the U.S. co-pending application serial number 09/975,485. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-20 of the instant application substantially recites the limitations of claims 1-25 of the cited co-pending application. Therefore, it would have been obvious to one of ordinary skill in the art of data processing at the time the invention was made to modify the cited steps as indicated claims 1-20 of the instant application since the omission and addition of the cited limitations would have not changed the process according to which the method for managing data imaging services from management terminal in a distributed computer system. Therefore, the ordinary skilled artisan would have been also motivated to modify claim 1-20 of the cited US instant application by substituting the use of controlling the federated beam to designate master volumes, shadow volumes and bitmap volumes and to transfer data between specified master and shadow volumes with the use of controlling the federated beam to enable a data read cache by instructing the interface layer to intercept requests for data from the storage device by US co-pending application. The cited adding and omitting elements would not interfere with the functionality of the steps previously claimed and would perform the same function. In re Karlson, 136 USPQ 184 (CCPA 1963).

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jean M. Corrielus whose telephone number is (571) 272-4032. The examiner can normally be reached on 10 hours shift.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jean M Corrielus
Primary Examiner
Art Unit 2162

July 30, 2005